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# IOWA LEGISLATIVE INTERIM CALENDAR AND BRIEFING

August 31, 2016

2016 Interim No. 4

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Tuesday, September 13, 2016

**Administrative Rules Review Committee**

9:00 a.m., Room 116, Statehouse

*Iowa Legislative Interim Calendar and Briefing* is published by the Legal Services Division of the Legislative Services Agency (LSA). For additional information, contact: LSA at (515) 281-3566.

# AGENDAS

## INFORMATION REGARDING SCHEDULED MEETINGS

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### **Administrative Rules Review Committee**

Chairperson: Senator Wally Horn

Vice-Chairperson: Representative Dawn Pettengill

Location: Room 116, Statehouse

Date & Time: Tuesday, September 13, 2016, 12:30 p.m.

LSA Contacts: Jack Ewing, Legal Services, (515) 281-6048; Tim Reilly, Legal Services, (515) 725-7354.

Agenda: To be announced.

Internet Site: <https://www.legis.iowa.gov/committees/committee?endYear=2015&groupID=705>

### ADMINISTRATIVE RULES REVIEW COMMITTEE

August 5, 2016

**Chairperson:** Senator Wally Horn

**Vice Chairperson:** Representative Dawn Pettengill

**INSPECTIONS AND APPEALS DEPARTMENT, *Residential Care Facilities—Training Requirements for Certified Medication Aides*, 8/3/16 IAB, ARC 2643C, ADOPTED.**

**Background.** This rulemaking rescinds rules requiring that an individual first be a certified nursing assistant (CNA) before becoming a certified medication aide (CMA) in residential health care facilities. Eliminating this requirement will permit an individual to become trained as a CMA without first being trained as a CNA.

**Commentary.** Public comment was heard from Mr. Doug Struyk on behalf of the Iowa Council of Health Care Centers. Mr. Struyk suggested that residential health care facilities would have difficulty verifying the qualifications for CMAs under the standard set out in this rulemaking. Department representative Mr. David Werning explained that CMA qualifications could be verified but stated that the department is still analyzing Mr. Struyk's feedback to determine the potential impact of this rulemaking on the facilities at issue. Committee members expressed a desire for this rulemaking not to go into effect until the department has had a chance to review Mr. Struyk's comments and determine if any further action is necessary. This rulemaking will be subject to review further at the committee's September 13 meeting.

**Action.** A motion for a 70-day delay passed on a short-form vote (seven votes required to pass).

### PUBLIC HEALTH DEPARTMENT, *Practice of Tattooing*, 8/3/16 IAB, ARC 2656C, ADOPTED.

**Background.** This rulemaking includes various updates to the Department of Public Health (DPH) rules on the practice of tattooing. The rulemaking updates definitions; updates application requirements and fee schedules; establishes deactivation and reinstatement fees to encourage timely renewals; increases fees for temporary tattoo establishments; adds instructions for completing an online application that will be available January 1, 2017; clarifies general provisions for tattoo artists and tattoo establishments; clarifies and updates sanitation and infection control provisions; clarifies tattoo equipment requirements and tattooing procedures; clarifies establishment permit requirements; provides that no new mobile tattoo units be permitted effective July 1, 2016; clarifies inspection and inspector requirements; and clarifies permit revocation and other enforcement actions. The rulemaking resulted from discussions held with a tattoo artist stakeholder group.

DPH received 27 comments from licensed tattoo artists, county sanitarians, and Committee members. The department made changes to the noticed language in response to feedback, including removing the concept of guest tattoo artists, modifying documentation used to determine proof of age, and clarifying the definition of "disinfectant."

**Commentary.** DPH described the comment period for this rulemaking as "very active." In response to the comments, DPH revised the noticed rulemaking to remove all references to "guest tattoo artists," thereby maintaining that all tattoo artists operating in Iowa hold a high school diploma or GED. DPH also modified the definition of "disinfectant," modified a list of acceptable disposable gloves, and removed a requirement that applicants provide a photocopy of a birth certificate as proof of age.

Mr. Steve Barjonah, the owner of Crossroads Tattoo in Coralville, read aloud a written statement. Mr. JayR Wilson, owner of Neon Dragon Tattoo and Body Piercing in Cedar Rapids, also spoke, primarily in response to a question about tattoo removal. Next to speak was Mr. Jacob Helm from True Vision Tattoos and Fine Arts in Dubuque. He was followed by Mr. Earl Ramey, owner of Sacred Diamond Tattoo in Des Moines.

All four parlor owners offered support for this rulemaking and spoke about the need for sufficient regulation to ensure their profession is held to a high standard and respected by the public. Mr. Helm, a felon and former parolee, discussed the challenges felons face in opening their own small businesses and mentioned that tattooing can be one of the few available fields of work for felons upon their release from prison. Mr. Ramey opined that requiring a high school diploma or GED for licensure is unnecessary and may prevent otherwise qualified individuals from opening businesses. Several parlor owners expressed concern that body piercing is unregulated by the state of Iowa and encouraged legislative action to regulate such businesses. One Committee member agreed with that sentiment.

There was also discussion, prompted by a Committee member's question, regarding tattoo removal. DPH made clear that tattoo removal is regulated by the Board of Medicine, so it was unable to provide much specific detail regarding the regulation of tattoo removal.

**Action:** No action taken.

(Administrative Rules Review Committee continued from Page 3)

**NATURAL RESOURCE COMMISSION, *Alcoholic Liquor, Beer, and Wine Ban at Beaches in Lake Macbride State Park and Pleasant Creek State Recreation Area*, 7/6/16 IAB, ARC 2612C, NOTICE.**

**Background.** These proposed rules ban alcoholic liquor, beer, and wine at the beaches located in Lake Macbride State Park and Pleasant Creek State Recreation Area. The commission cites the disproportionate number of arrests made and citations issued at these locations relating to alcohol, the high number of personnel needed to respond to such incidents, and increasing the safety and enjoyment of park users as reasons for this rulemaking.

Commission rules define “beach” as “that portion of state parks or recreation areas designated for swimming activity including the sand, a 200-foot buffer of land surrounding the sand or a designated area which is fenced in, and the water area contiguous to the beach as marked by swim buoys or swim lines.” However, the alcohol ban would not apply to any rental facilities located within the 200-foot buffer of land surrounding the sand or fenced-in area that have been officially reserved through the Department of Natural Resources.

**Commentary.** Commission representative Mr. Todd Coffelt explained the commission’s rationale for this rulemaking. In response to a committee member’s question, he explained that this would be the first alcohol ban at any state park or recreation area. He suggested that the number of alcohol-related incidents at the two locations at issue may have increased after alcohol bans at certain federally regulated areas nearby took effect.

Committee members questioned if this issue could be solved through better enforcement of current legal requirements in these locations, including more enforcement personnel, rather than banning alcohol. Mr. Coffelt explained that these locations have a disproportionate number of citations and that increased enforcement would not be an efficient use of resources. He did note that each location only has one enforcement officer present. Committee members questioned if the commission had accurately analyzed the number of citations at these locations relative to all state parks and recreation areas. He explained that when all the numbers are analyzed, the disproportionate number of alcohol-related citations at these two specific locations stands out.

**Action.** No action taken.

**IOWA STATE FAIR BOARD, *Weapons*, Rule 2.5, SPECIAL REVIEW.**

**Background.** This rule prohibits carrying or possession of any weapon, including firearms, by any person other than a peace officer on the state fairgrounds unless authorized by the Fair Board. This rule was subject to a special review by the committee.

**Commentary.** Committee members explained that this special review was brought at the request of a constituent who opposed prohibiting the carrying of weapons during the Iowa State Fair. Mr. Gary Slater, CEO of the Iowa State Fair, noted that the rule in question has been in effect since 1980. Mr. Slater explained in response to a committee member’s question that if a person is found to possess a weapon on the state fairgrounds, they will be escorted from the premises if they have a permit for the weapon, and relevant legal processes will be followed if they do not have a permit for the weapon.

Mr. Richard Rogers spoke in opposition to the rule on behalf of the Iowa Firearms Coalition. He questioned whether the board had the legal authority to adopt the rule in question and whether the rule makes the fairgrounds safer. He asserted that the board lacks specific statutory authority to adopt this rule, that the rule was not enforced until changes in Iowa’s gun permit law in 2011, that the rule unfairly covers persons holding lawful gun permits, and that a gun prohibition will generally make an area less safe. He urged the board to issue a blanket authorization to carry guns under the process provided in the rule.

Several members of the public spoke in support of the rule as currently applied. They generally asserted that allowing guns at the fairgrounds would make the state fair less safe and expressed particular concern about an active shooter situation. They also discussed the number of gun-related deaths in the United States. Several stated that they would not attend the state fair in the future if guns were allowed there.

Committee members stated that it would be more appropriate to seek a legislative solution than to address this rule specifically and questioned whether the committee could resolve the issue. Committee members also questioned whether it would be safe to allow guns at the state fair given the number of people who attend and the ease of access to alcohol.

**Action.** No action taken.

(Legal Updates-Iowa State Fair Board continued from Page 4)

**Next meeting.** The next committee meeting will be held in Room 116, Statehouse, on Tuesday, September 13, 2016, beginning at 9:00 a.m.

LSA Staff: Jack Ewing, LSA Counsel, (515) 281-6048; Tim Reilly, LSA Counsel, (515) 725-7354.

Internet Site <https://www.legis.iowa.gov/committees/committee?groupID=705&ga=86>

## LEGAL UPDATES

**Purpose.** Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.

## ELIGIBLE ELECTORS AND THE CONSTITUTIONAL DEFINITION OF INFAMOUS CRIME

Filed by the Iowa Supreme Court  
June 30, 2016

**Griffin v. Pate**

**No. 15-1661**

[http://www.iowacourtsonline.org/About the Courts/Supreme Court/Supreme Court Opinions/Recent Opinions/20160630/15-1661.pdf](http://www.iowacourtsonline.org/About%20the%20Courts/Supreme%20Court/Supreme%20Court%20Opinions/Recent%20Opinions/20160630/15-1661.pdf)

**Factual Background.** Kelli Jo Griffin (Griffin) is a United States citizen, an Iowa resident, and is older than 18 years of age. Any similarly situated person is generally considered an eligible elector in Iowa, and therefore able to register to vote and to vote under the Iowa Constitution, however, the Iowa Constitution does disqualify individuals from being eligible electors if they have been convicted of an infamous crime or adjudged mentally incompetent to vote. Under Article II, section 5 of the Iowa Constitution, such individuals are disfranchised from the right to vote.

In 2008, an Iowa district court found Griffin guilty of a class "C" felony for delivering 100 grams or less of cocaine (delivery of a controlled substance). The court sentenced Griffin to a suspended term of incarceration and five years' probation. At the time of Griffin's 2008 conviction, former Governor Tom Vilsack's Executive Order 42 was in effect, which provided for the automatic restoration of citizenship rights for felons following the successful discharge of their sentences. In January 2011, Governor Terry Branstad issued Executive Order 70, which immediately rescinded Executive Order 42. Since Executive Order 70 was issued, convicted felons who have fully discharged their felony sentences have been required to apply to have their citizenship rights restored by the governor under Article IV, section 16 of the Iowa Constitution. Griffin's sentence was discharged in January 2013; she did not apply to have her citizenship rights restored by the governor.

In November 2013, Griffin registered to vote and voted a provisional ballot in a city election in Montrose, Iowa. Based upon her 2008 felony conviction, the Lee County Auditor determined that Griffin was disqualified from voting. Pursuant to Iowa Code section 48A.15, voter registration applicants attest to meeting all eligible elector requirements under signature and penalty of perjury. Griffin was charged with perjury under this law, but was later acquitted in a jury trial.

**Procedural Background.** In November 2014, Griffin filed a petition in district court against the Governor, the Secretary of State, and her County Auditor, asking the court to declare that her felony conviction did not render her ineligible to vote under the Iowa Constitution and seeking an injunction and a writ of mandamus that would recognize and protect her right to vote. After the Governor was dismissed from the suit, the district court found that Griffin's 2008 conviction disqualified her as an elector and also rejected her additional claim that the citizenship rights restoration process violated her due process rights.

**Issue on Appeal.** Whether the felony crime of delivery of a controlled substance is an infamous crime under Article II, section 5 of the Iowa Constitution.

**Holding.** The Iowa Supreme Court (Court) held that all felonies under Iowa and federal law, including the felony crime of delivery of a controlled substance, are infamous crimes under Article II, section 5 of the Iowa Constitution.

(Legal Updates—Eligible Electors and the Constitutional Definition of Infamous Crime continued from Page 5)

**Majority Opinion by Chief Justice Cady.** Chief Justice Cady’s majority opinion, joined by Justices Waterman, Mansfield, and Zager, held that any felony under Iowa law meets the standard of infamy under Article II, section 5 of the Iowa Constitution. The Court, while recognizing voting as a basic and fundamental right under the Iowa Constitution, reasoned that the constitutional history of Article II, section 5 of the Iowa Constitution, the text of that section, and the purpose of the infamy provision are consistent with a finding that all felonies are infamous crimes. The Court further reasoned that the Iowa Legislature has provided a clear community standard for infamy by passing legislation in 1994 that included all felonies within the statutory definition of an infamous crime contained in Iowa Code section 39.3, subsection 8.

The Court examined the history of infamous crimes as a legal concept, including common law and canon law traditions and the enactment of the Iowa Constitution, and concluded that the concept of infamy has long been associated with felony crimes. The Court also noted that, despite historical shifts in the nature of and public attitudes towards crime, the longstanding interpretation of Iowa’s infamous crime provision had disqualified individual felons from the right to vote with little legislative intervention for over 150 years. The Court discussed the lack of substantive legislative changes in this area of law during that period and categorized the limited legislative enactments on the subject as an implementation of federal law and the codification of an accepted interpretation of the infamous crimes provision under the Iowa Constitution. The Court then detailed its own historical interpretations of infamy in relation to the right to vote, hold public office, give testimony at trial, and disqualify witnesses, and noted that the Court’s historical standard applicable to the right to vote had established that until 2014, all crimes punishable by imprisonment in a state penitentiary were considered infamous crimes. In 2014, the Court abandoned this earlier punishment-based standard and held, in a limited context, that an infamous crime must: 1) be particularly serious, and 2) must “reveal that voters who commit the crime would tend to undermine the process of democratic governance through elections.” The Court, however, did not provide a new standard for how lower courts should interpret the infamous crimes provision under the Iowa Constitution with respect to felonies.

In this case, the Court established a new standard that recognizes that all felonies are infamous crimes. The Court aligned this new constitutional standard both with the text of the constitutional provision, defining infamy in relation to community reputation, and with a legislative history that has provided the Court with a statutorily enacted prevailing community standard since 1994. According to the Court, this prevailing community standard for the definition of infamy was established in 1994 when the Iowa Legislature codified provisions that disqualified persons from registering to vote and from voting if they had been convicted of a felony under Iowa or federal law. The Court thereby implied that this legislatively enacted community standard reflects a societal judgment that allowing felons to vote would tend to undermine the process of democratic governance through the election process. The Court also opined that the prevailing community standard, without any legislative enactments to the contrary, has not shifted in the intervening years, and also suggested that a democracy is capable of redefining such a prevailing community standard through future legislative actions.

**Dissent by Justice Wiggins.** Justice Wiggins dissented, joined by Justices Hecht and Appel. Justice Wiggins opined that it is not the legislature’s duty, but that of the Court, to interpret the meaning of the phrase “infamous crime” under Article II, section 5 of the Iowa Constitution and criticized the majority opinion for not fully analyzing that phrase under what Justice Wiggins categorized as the Court’s previously robust framework for analyzing individual rights under the Iowa Constitution.

**Dissent by Justice Hecht.** Justice Hecht filed a separate dissent, joined by Justices Wiggins and Appel. Justice Hecht reasoned that for a crime to be considered infamous under Article II, section 5 of the Iowa Constitution, the crime that disqualifies a citizen from voting must have a “nexus to the electoral process.” Challenging the majority opinion, Justice Hecht also restated a principle upheld by the Court in prior cases that the legislature is incapable of adding to or subtracting from constitutionally-based voter qualifications through statutory enactments. Unconvinced that Griffin’s 2008 conviction rendered her a threat to fair elections, Justice Hecht then proceeded to analyze the relevant Iowa statutory provisions under a strict scrutiny analysis, opining that the statutory provisions are unconstitutional because they are not narrowly tailored to serve a legitimate purpose (protecting the integrity of the ballot box) as related to the infamous crimes provision of the Iowa Constitution.

Justice Hecht further opined that, under a strict scrutiny analysis, majoritarian, legislatively enacted preferences to disenfranchise felons cannot undermine the fundamental constitutional right of citizens to vote, unless that preference coincides with a compelling governmental interest. He argued that it is “fanciful at best” to conclude, based on her

(Legal Updates—Eligible Electors and the Constitutional Definition of Infamous Crime continued from Page 6)

2008 conviction, that allowing Griffin to vote would somehow undermine the electoral process or democratic governance. Justice Hecht further opined that disenfranchisement from the electoral process undermines a separate compelling interest in rehabilitating felons and reintegrating them into society.

**Dissent by Justice Appel.** Justice Appel filed a separate dissent, joined by Justices Wiggins and Hecht. Justice Appel also reasoned that Griffin should not be disqualified as an elector based upon Griffin's 2008 conviction. Justice Appel engaged in historical constitutional analyses to opine that: 1) the drafters of the Iowa Constitution intended for the Court and not the legislature to be the arbiter of the definition of an infamous crime under Article II, section 5 of the Iowa Constitution, and 2) the meaning of an infamous crime under Article II, section 5 is not synonymous with a felony and any definition of infamous crime in the context of Article II, section 5 must have a nexus to the integrity of the election process. Justice Appel then concluded that Griffin's particular conviction had no nexus to the integrity of elections and that she should therefore be entitled to vote. Justice Appel concluded his dissent by noting various societal and administrative implications associated with upholding a definition of infamous crime based on felony convictions.

*LSA Monitor:* Andrew J. Ward, Legal Services, (515) 281-2251

## CONSTITUTIONALITY OF JUVENILE LIFE SENTENCES

**Filed by the Iowa Supreme Court**

**May 27, 2016**

**State v. Sweet**

**No. 14-0455**

[http://www.iowacourts.gov/About\\_the\\_Courts/Supreme\\_Court/Supreme\\_Court\\_Opinions/Recent\\_Opinions/20160527/14-0455.pdf](http://www.iowacourts.gov/About_the_Courts/Supreme_Court/Supreme_Court_Opinions/Recent_Opinions/20160527/14-0455.pdf)

**Background Facts.** Seventeen-year-old Isaiah Sweet (Sweet) shot and killed his grandparents Richard and Janet Sweet in Manchester, Iowa, on May 11, 2012. Sweet's grandparents had raised Isaiah since he was a young child. After he was given *Miranda* warnings, Sweet confessed to the murders and disclosed his activities after the murders. He stated he shot his grandfather in the head because his grandfather made his life "a living hell." He then shot his grandmother and drove to Cedar Rapids and Iowa City and attended several parties over the next few days. Sweet was subsequently arrested a few days later in Iowa City for the murders of Richard and Janet Sweet.

**Procedure and Sentencing Hearing.** The State charged Sweet with two counts of murder in the first degree in violation of Iowa Code section 707.2. Sweet pled guilty to two counts of murder in the first degree and the State agreed to recommend that the sentences run concurrently. A presentence investigation report (PSI) was prepared prior to sentencing. The PSI indicated Sweet had a previous arrest history for the crime of assault with the intent to commit sexual abuse and some minor criminal offenses. The PSI also indicated Sweet had a tumultuous family life with Richard and Janet Sweet. At the sentencing hearing, Sweet offered the testimony of Dr. Stephen Hart, who summarized the advancements regarding the understanding of the development of the adolescent brain. The doctor noted that when a person is young they are more impulsive, and as people age, the person develops skills to inhibit behavior. The doctor concluded Sweet had severe developmental problems, and serious problems relating to mental health, personal relationships, and educational adjustment. The doctor further noted that Sweet's decision-making ability was destabilized by impulsivity. The doctor concluded that there was some chance Sweet could be rehabilitated, but that a determination could not be made regarding Sweet's potential for rehabilitation until Sweet reaches at least 30 years of age. After hearing testimony, including testimony from Sweet where he expressed remorse, the district court sentenced Sweet to life in prison without the possibility of parole. The district court concluded that Sweet would continue to be a threat to society and that the interests of justice and community safety outweighed any mitigating factors.

**Issue.** Whether life without the possibility of parole should be categorically banned for juvenile offenders under the Iowa Constitution.

**Holding.** The Iowa Supreme Court (Court) in a 4-3 decision concluded that a juvenile convicted of murder in the first degree and sentenced to life without the possibility of parole is cruel and unusual punishment and violates Article I, section 17 of the Iowa Constitution.

**Court's Analysis.** Sweet argued that the rationale of previous federal case law, namely, *Graham v. Florida*, 560 U.S. 48 (2010) (banning juvenile life sentences without parole for nonhomicide offenses), is analogous to banning juvenile

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life sentences for homicide offenses because, like nonhomicide offenses, it is impossible to determine the future behavior of juvenile offenders. The State argued that there is nothing in Sweet's background that supports a lesser sentence and no evidence that Sweet can be rehabilitated. The Court agreed with Sweet's argument and adopted a categorical rule that a juvenile offender shall never be sentenced to life without the possibility of parole under Article I, section 17 of the Iowa Constitution. As a result of this decision, the sentence of the district court was vacated and the case was remanded back to district court for resentencing. The majority opinion emphasized that a juvenile is not entitled to be paroled but must be parole eligible. The majority further emphasized that the determination of the irredeemable corruption of a juvenile must be made when the information becomes available, not when the juvenile's character is still "a work in progress." The practical effect of the Court's decision makes it unconstitutional for a juvenile who commits murder in the first degree to be sentenced to life in prison without the possibility of parole including such juveniles who were sentenced prior to the Court's decision.

**Concurrences.** Chief Justice Cady specially concurred with the majority but wrote separately to emphasize that the current juvenile sentencing scheme should be maintained including sentencing a juvenile to a life sentence without the possibility of parole, however the sentencing scheme should allow for the sentencing court to reconsider a juvenile life sentence without the possibility of parole at a later point after the juvenile's brain has fully developed. Justice Wiggins also concurred with the majority opinion to underscore that this ruling does not require the Board of Parole to release every juvenile class "A" felon at some point in the future. He noted that Iowa Code section 906.4 sets forth the standards the Board of Parole must abide by prior to granting parole, a standard that many juvenile class "A" felons will never be able to meet.

**Dissents.** Justice Mansfield dissented, stating that neither the United States Constitution nor the Iowa Constitution categorically prohibits the legislature from authorizing a life without parole sentence for a juvenile. He further stated that "more is needed" before the Court can strike down a legislatively authorized sentence, especially a sentencing scheme the legislature authorized in 2015 by large majorities in both houses (Senate File 448). Justice Mansfield emphasized that the point of Senate File 448 was to clear up ambiguities from previous case law as long as the individualized sentencing standards set forth in *Miller v. Alabama*, 567 U.S. \_\_\_, (2012) apply to the juvenile being sentenced. In addition, he noted the majority opinion either disregards or gives "short shrift" to previous Iowa case law regarding cruel and unusual punishment. Justice Zager filed a separate dissent, agreeing with Justice Mansfield's dissent but writing separately to express an ongoing objection to the Court's lack of confidence in a district court judge's ability to make difficult decisions in the area of juvenile sentencing involving life sentences without parole. He emphasized sentencing decisions are the type of difficult decisions judges are expected to make every day.

*LSA Monitor: Joseph McEniry, Legal Services, (515) 281-3189*

## DEFINITION OF "MEETING" UNDER IOWA'S OPEN MEETINGS LAW

Filed by the Iowa Supreme Court

March 18, 2016

**Hutchison v. Shull**

**No. 14-1649**

[http://www.iowacourts.gov/About\\_the\\_Courts/Supreme\\_Court/Supreme\\_Court\\_Opinions/Recent\\_Opinions/20160318/14-1649.pdf](http://www.iowacourts.gov/About_the_Courts/Supreme_Court/Supreme_Court_Opinions/Recent_Opinions/20160318/14-1649.pdf)

**Background:** In January 2014, the three-member Warren County Board of Supervisors (board) and the County Administrator (administrator) began working on a plan to restructure and reorganize the county's workforce which included a plan to eliminate some existing county employee positions. Each County Supervisor (supervisor) met with the administrator individually in January 2014 to discuss the possibility of a countywide reorganization, but no two supervisors were present at the same time when these meetings were held. In February 2014, the board passed a resolution appointing one of the supervisors to do further research on the issue of a countywide reorganization to determine whether a restructuring plan was necessary. In March 2014, after the county's annual budget was unanimously approved at a public meeting by the board, the administrator, acting pursuant to delegated authority, undertook the task of drafting a written report (county reorganization plan) identifying all county employee positions eventually recommended for elimination and working out the terms of the severance packages ultimately offered to the county employees whose positions had been eliminated. In March 2014, the administrator met on numerous occasions with each

# LEGAL UPDATES

(Legal Updates—Definition of “Meeting” Under Iowa’s Open Meetings Law continued from Page 8)

supervisor, individually, about the county reorganization plan during which each supervisor held discussions and commented about various aspects of the reorganization plan. The administrator reported each supervisor’s comments to the other supervisors, and after several additional meetings between each supervisor and the administrator, the administrator found out from each supervisor whether that supervisor would approve whatever particular aspect of the reorganization plan that had been discussed during a particular meeting. Through this process, the board reached a compromise on various aspects of the reorganization plan and the administrator confirmed with each supervisor, individually, whether the supervisor would ultimately approve the final draft of the county reorganization plan as well as the severance packages offered to county employees whose positions had been eliminated. Every meeting that occurred between the administrator and each supervisor was held in private and without public notice.

In late March 2014, county employees whose positions were recommended for elimination in the report were given layoff notices. Once this information became public, other county officials met with one of the supervisors and the administrator to find out why they had not been informed there were issues with the county budget. The administrator responded that the supervisors could not talk to others about the reorganization as it was necessary that “everything be kept quiet.”

On April 16, 2014, six of the county employees whose positions had been eliminated filed a lawsuit in district court against the board, the county, and the supervisors, individually, claiming the board’s actions violated Iowa’s Open Meetings Law (Iowa Code chapter 21). Two days after the terminated county employees filed a lawsuit in district court, the board held a special public meeting on the county reorganization and the severance agreements which lasted approximately 20 minutes. The board approved the county reorganization plan and the severance agreements without discussion or deliberation by the board and without public comment.

**District Court:** The district court held that the supervisors did not violate the open meetings law by failing to provide public notice and hold a public meeting on the county reorganization plan when the administrator met with the supervisors individually because a majority of the supervisors did not deliberate together at a meeting as required by the definition of a meeting under the open meetings law.

**Issue on Appeal:** Whether the district court was correct in determining that the meetings that occurred between the administrator and each supervisor, individually, did not constitute a gathering of a majority of the members of the board within the definition of a meeting under the open meetings law.

**Majority Opinion:**

Justice Wiggins, writing for a 4-3 majority, began his analysis by noting that this case involves the statutory interpretation of the definition of a “meeting” in Iowa Code section 21.2(2):

2. “Meeting” means a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body’s policy-making duties. Meetings shall not include a gathering of members of a governmental body for purely ministerial or social purposes when there is no discussion of policy or no intent to avoid the purposes of this chapter.

In this case, the supervisors argued that a gathering of a majority of the board within the definition of a meeting for purposes of the open meetings law occurs only when a majority of the members of a governmental body “personally assemble in close temporal proximity,” consistent with the Court’s decision in *Telegraph Herald Inc., v. City of Dubuque*, 297 N.W.2d 529, 533 (Iowa 1980). *Telegraph Herald* was a case involving an interpretation of this same Code section, where the Court held that in order for “serial” submajority gatherings of members of a governmental body to collectively qualify as a meeting of the majority of a governmental body, a majority of the members themselves must deliberate in “temporal proximity” to each other. The Court distinguished its decision in the *Telegraph Herald* case from this case because the employees in this case did not claim that serial submajority gatherings of the supervisors occurred, but argued instead that each meeting that occurred between each supervisor and the administrator during which the administrator deliberated the reorganization plan at the “behest” of another supervisor was the legal equivalent of an informal in-person gathering of a majority of board members involving matters within the scope of the board’s policy-making duties.

The Court opined that construing the term gathering to apply only to face-to-face deliberations where a majority of members of a governmental body are physically present and to serial submajority deliberations of a majority of members occurring in close temporal proximity would be inconsistent with the clear purpose of the open meetings law to

# LEGAL UPDATES

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assure that all governmental decisions are easily accessible to the public. The Court thus determined that the statute is ambiguous on the question of whether governmental bodies may utilize agents to deliberate on their behalf without complying with the requirements of the open meetings law and stated that the common law of agency should be applied to the facts of the case to resolve this statutory ambiguity.

**Holding:** The Court concluded that the definition of a meeting in Iowa Code section 21.2 includes a majority of members of a governmental body gathering in person or through the use of agents or proxies to deliberate any matter within the scope of the governmental body’s policymaking duties outside the public view. The Court reversed and remanded the case to the district court with directions to the court to determine whether an agency relationship existed between the administrator and each supervisor, and whether the administrator acted within the scope of her authority in her discussions and deliberations about the county reorganization plan with the supervisors. If the district court finds that both an agency relationship existed and that the administrator acted within her scope of authority, the Court directed the district court to apply the definition of a meeting in accordance with this opinion “to conclude that a violation of the open meetings law occurred.”

**Dissents.**

**Justice Waterman.** Justice Waterman, joined by Justices Mansfield and Zager, dissented. Justice Waterman opined that the majority’s decision replaces a clear and easy-to-follow rule with a vague standard based upon a “new” theory of agency that invites litigation and that would have a chilling effect on interactions between public officials and their staff. Redefining the definition of a meeting under the open meetings law is a policy matter for the legislature, not the courts. Justice Waterman opined that the *Telegraph Herald* case established the correct interpretation of Iowa Code section 21.2(2) in which the Court held that “temporal proximity” must exist between all governmental body members under the definition of a meeting and the majority’s decision overrules that holding.

**Justice Mansfield.** In a separate dissent, Justice Mansfield, joined by Justices Waterman and Zager, took issue with the majority’s characterization of the law of agency, noting that the scope of a person’s agency should be considered. The district court record supports the fact that the administrator in this case was a type of agent with authority to carry messages between the supervisors, but that the administrator was not a proxy with decision-making authority to work out a restructuring plan--there is a clear distinction between a proxy and a conduit. Conduits and proxies are both agents, but they differ in the scope of their authority.

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